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11 INC., and NEWELL BRANDS, INC.

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE OFFICE

14 KELLY TATUM,

15 Plaintiff(s),

16 v.
17 SUNBEAM PRODUCTS, INC., a
18 Delaware corporation; NEWELL
19 BRANDS, INC., a Delaware
20 corporation, BED BATH & BEYOND,
INC., a New York corporation; and
DOES 1-25

21 Defendant(s).

22 Case No. Removed from Santa Clara
23 Superior Court, Case No. 22CV395992

24 **DEFENDANTS SUNBEAM
PRODUCTS, INC.'S AND NEWELL
BRANDS, INC.'S NOTICE OF
REMOVAL OF ACTION UNDER 28
U.S.C. § 1441**

25 (Filed concurrently with Declaration of Joseph
R. Coriaty; Defendants' Corporate Disclosure
26 Statements; Civil Case Cover Sheet)

27 Complaint Filed: 3/17/2022

28 Trial Date: N/A

29 PLEASE TAKE NOTICE that Defendants, SUNBEAM PRODUCTS, INC.,
30 (hereinafter "Sunbeam,") and NEWELL BRANDS, INC. ("hereinafter "Newell"),
31 hereby remove the above-captioned action from the Superior Court of the State of
32 California, Santa Clara County, where it is currently pending as Case No.

1 22CV395992, to the United States District Court for the Northern District of
 2 California – San Jose Division.

3 **Grounds For Removal**

4 This is a civil action over which this Court has subject matter jurisdiction
 5 under 28 U.S.C. §1332, which confers original jurisdiction of “all civil actions where
 6 the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest
 7 and costs, and is between ... citizens of different States and in which citizens or
 8 subjects of a foreign state are additional parties[.]” Here, Plaintiff and Defendants
 9 Sunbeam, Newell, and BED BATH & BEYOND, INC. (hereinafter “BB&B”) are
 10 each citizens of different states, and the amount in controversy exceeds \$75,000,
 11 exclusive of interest and costs.

12 Removal is warranted under 28 U.S.C. §1441(b) because this is a civil action
 13 over which this Court has subject matter jurisdiction under 28 U.S.C. §1332, on the
 14 grounds that complete diversity exists between the parties and the amount in
 15 controversy exceeds the sum of \$75,000.

16 **Background**

17 On or about March 17, 2022, Plaintiff, KELLY TATUM (hereinafter
 18 “Plaintiff”) commenced an action in the Superior Court of the State of California in
 19 the County of Santa Clara, entitled *Kelly Tatum v. Sunbeam, Inc.;*
 20 *Newell Brands, Inc.; Bed Bath & Beyond, Inc., and Does 1 to 25; Case No.*
 21 *22CV395992.*) Plaintiff’s complaint asserts causes of action for Strict Products
 22 Liability, Negligence and Breach of Warranty against Sunbeam, Newell and BB&B.

23 On or about April 19, 2022, Defendants Sunbeam, Newell and BB&B, all
 24 corporate entities, were served with Plaintiff’s Complaint. (Coriaty Decl., ¶ 2.)

25 Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process,
 26 pleadings, and orders served upon Defendants Sunbeam and Newell are attached as
 27 **Exhibit A** to the Declaration of Joseph R. Coriaty in support of Defendants’ Notice
 28 of Removal of Civil Action (“Coriaty Decl.”), submitted herewith. Prior to the filing

1 of the Notice of Removal for Defendants Sunbeam and Newell, Defendants' counsel
 2 reviewed the Santa Clara County Superior Court's online docket regarding the
 3 above-captioned action. Based on that review, and to the best of Defendants'
 4 counsel's knowledge, the foregoing Complaint, the pleadings, and documents
 5 attached to the Coriaty Declaration as Exhibit A constitute all of the process,
 6 pleadings, orders, and other documents received by Defendants Sunbeam and
 7 Newell and/or filed in the state court action in Santa Clara County Superior Court.
 8 (Coriaty Decl., ¶¶ 2-3.) Defendants Sunbeam and Newell have no reason to believe
 9 a related case exists. (Coriaty Decl., ¶ 8.)

Jurisdiction

10 This matter is properly subject to federal jurisdiction due to the fact that there
 11 is diversity of citizenship among the parties and the amount in controversy exceeds
 12 \$75,000.

Diversity of Citizenship

13 Diversity jurisdiction exists where there is diversity of citizenship between the
 14 parties at the time the lawsuit is filed. *Grupo Dataflux v. Atlas Global Group, LP*,
 15 541 U.S. 567, 571 (2004). Defendants Sunbeam and Newell properly may remove
 16 the Complaint on the basis of diversity of citizenship jurisdiction pursuant to 28
 17 U.S.C. § 1332(a) because complete diversity of citizenship exists between the
 18 parties.

19 For diversity purposes, an individual is a "citizen" of the State in which he or
 20 she is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir.
 21 1983). Pursuant to 28 U.S.C. § 1332(c)(1), "a corporation shall be deemed to be a
 22 citizen of every State and foreign state by which it has been incorporated and of the
 23 State or foreign state where it has its principal place of business." Plaintiff is
 24 domiciled in Santa Clara County in the State of California and, therefore, was a
 25 citizen of California within the meaning 28 U.S.C. § 1332(a). (*See* Coriaty Decl.,
 26 Ex. A (Complaint, ¶ 11).) Defendant Sunbeam, a corporate entity, is a Delaware
 27
 28

1 Corporation with its principal place of business at 2381 Executive Center Drive,
 2 Boca Raton, Florida 33431, and is therefore a citizen of the States of Delaware and
 3 Florida for purposes of determining diversity. Defendant Newell, a corporate entity,
 4 is a Delaware Corporation with its principal place of business at 6655 Peachtree
 5 Dunwoody Road, Atlanta, Georgia 30328, and is therefore a citizen of the States of
 6 Delaware and Georgia for purposes of determining diversity. Defendant BB&B, a
 7 corporate entity, is a New York Corporation with its principal place of business at
 8 650 Liberty Avenue, Union, New Jersey 07083, and is therefore a citizen of the
 9 States of New York and New Jersey for purposes of determining diversity. The
 10 Corporate Disclosure Statement for Defendants Sunbeam and Newell have been
 11 filed concurrently herewith and a copy of BB&B's Entity Information for the New
 12 York Department of State, Division of Corporations, the state where BB&B is
 13 incorporated, is attached as **Exhibit B** to Mr. Coriaty's Declaration submitted
 14 herewith. (Coriaty Decl., ¶ 5.)

15 The defendants identified as Does 1 through 25 in the Complaint are fictitious
 16 parties against whom no cause of action can be validly alleged. To the best of all
 17 Defendants' knowledge, no fictitiously designated defendant has been served with
 18 process, and these fictitious parties may be ignored for purposes of determining
 19 removal. (Coriaty Decl., ¶ 4.) 28 U.S.C. § 1441(a) ("For purposes of removal under
 20 this Chapter, the citizenship of defendants sued under a fictitious name shall be
 21 disregarded."); *see also Newcombe v. Adolf Coors Co.*, 157 F.2d 686, 690-91 (9th
 22 Cir 1988).

23 Pursuant to 28 U.S.C. §1332(c)(1) full diversity exists among the parties in
 24 this action because all Defendants are incorporated and maintain their principal
 25 places of business in different states than where Plaintiff is a citizen.

26 Amount in Controversy

27 This Action also meets the amount in controversy requirement for removal
 28 based on diversity jurisdiction. 28 U.S.C. § 1332(a) authorizes the removal of cases

1 in which there is diversity of citizenship between the parties and the matter in
 2 controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.
 3 In determining whether the amount in controversy exceeds \$75,000.00, the Court
 4 must presume Plaintiff will prevail on his claims. *Kenneth Rothschild Trust v.*
 5 *Morgan Stanley Dean Witter*, 199 F.Supp.2d 993, 1001 (C.D. Cal. 2002), citing
 6 *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994) (the amount in
 7 controversy analysis presumes “plaintiff prevails on liability”) and *Angus v. Shiley,*
 8 *Inc.*, 989 F.2d 142, 146 (3rd Cir. 1993) (“the amount in controversy is not measured
 9 by the low end of an open-ended claim, but rather by reasonable reading of the value
 10 of the rights being litigated”). “The amount in controversy is simply an estimate of
 11 the total amount in dispute, not a prospective assessment of defendant's liability.”
 12 *Lewis v. Verizon Commc'nns, Inc.*, 627 F.3d 395, 401 (9th Cir. 2010). “In that sense,
 13 the amount in controversy reflects the maximum recovery the plaintiff could
 14 reasonably recover.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 927 (9th Cir.
 15 2019) (citing *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018)
 16 (explaining that the amount in controversy includes all amounts “at stake” in the
 17 litigation “whatever the likelihood that [the plaintiff] will actually recover them”)).
 18 The amount in controversy may include general and special compensatory damages
 19 and attorneys’ fees recoverable by statute. *Galt G/S v. JSS Scandinavia*, 142 F.3d
 20 1150, 1155-56 (9th Cir. 1998).

21 Without admitting Plaintiff is entitled to recover any damages whatsoever or
 22 that Defendants are liable to Plaintiff in any way, based the allegations in the
 23 Complaint and the reasonable assumptions to be drawn from those allegations, the
 24 amount in controversy with respect to Plaintiff’s individual claims exceeds \$75,000,
 25 the jurisdictional requirement of this Court. Plaintiff’s Complaint evidences that the
 26 amount in controversy exceeds \$75,000 by alleging Plaintiff “suffered significant
 27 injuries to Plaintiff’s right hand and fingers,” that “necessitated medical care and
 28 treatment;” Plaintiff was caused “serious injuries;” Plaintiff “suffered debilitating

1 injury to her right hand and finger;" Plaintiff has "suffered from past, and will suffer
2 from future, general damages including but not limited to, physical pain, mental
3 suffering, loss of enjoyment of life, disfigurement, physical impairment, discomfort,
4 inconvenience, anxiety, diminished capacity to perform activities of daily life, and
5 emotional distress;" and Plaintiff has and will "in the future incur special damages,
6 including but not limited to, medical expenses, loss of earnings, and other pecuniary
7 damages." Additionally, Plaintiff prays for costs and other relief. Defendants do not
8 currently have access to any of Plaintiff's medical or employment records nor her
9 medical billing.

10 **Venue**

11 Venue of this action lies in the United States District Court for the Northern
12 District of California – San Jose Division pursuant to 28 U.S.C. §§ 1441 et seq. and
13 1391(a) because it is the district and division embracing the state court where this
14 action was filed and is pending. Plaintiff alleges (a) the acts giving rise to the
15 incident occurred in the County of Santa Clara, and (b) all named Defendants are
16 registered to do business in California. (*See* Coriaty Decl., Ex. A (Complaint, ¶ 5-6
17 and ¶ 11).)

18 **Divisional Assignment**

19 Pursuant to Civil L.R.3-2(c) and (e), the divisional assignment of the San Jose
20 Division is proper due to the fact that the action arose in Santa Clara County.

21 **Removal Filed Timely**

22 This Notice of Removal was filed within thirty days of service of the
23 Complaint, which was completed on April 19, 2022. *See Murphy Bros., Inc. v.*
24 *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 353 (1999) (service of process is the
25 official trigger for responsive action by a named defendant, as opposed to receipt of
26 the complaint through some other means). This Notice of Removal is therefore filed
27 timely within the time period provided by 28 U.S.C. § 1446(b).

28 // /

1 Consent of Other Defendants to Joinder of Removal

2 Despite making diligent efforts to contact Defendant BB&B, including
 3 directing communications to General Counsel for BB&B and to counsel of record
 4 for BB&B in a recent prior matter in order to obtain consent to joinder of removal,
 5 this office has been unable to make contact with BB&B to obtain consent for joinder
 6 of removal. (Coriaty Decl., ¶ 7.) When fewer than all defendants have joined the
 7 notice of removal, it is the moving defendant's burden to explain the absence of the
 8 other defendants, such as BB&B here. *See Prize Fize, Inc. v. Matrix (U.S.) Inc.*, 167
 9 F.3d 1261, 1266 (9th Cir. 1999) (Absent such explanation, removal notice is "facially
 10 deficient" and the defect must be cured within 30 days to avoid remand). The
 11 removing defendant may cure the defect by obtaining joinder of other defendants
 12 prior to entry of judgment. *Destfino v. Reiswig*, 630 F.3d 952, 955 (9th Cir. 2011).
 13 Delay in filing joinder or consent to removal has been treated as a nonjurisdictional
 14 defect, and removal has been upheld where the opposing party was not prejudiced
 15 by delay. *Hernandez v. Six Flags Magic Mountain, Inc.*, 688 F.Supp. 560, 562-563
 16 (CD CA 1988).

17 Based on prior similar dealings with BB&B, this office has reason to believe
 18 that BB&B will, in fact, consent to removal in this matter and/or that BB&B will
 19 tender the matter to Defendant(s) Sunbeam and/or Newell, in which case, BB&B
 20 will consent to removal. Upon proof of appearance by BB&B, or at the earliest time
 21 practicable, this office will be able to confirm the identity of counsel for BB&B and
 22 endeavor to obtain consent to remove forthwith. (Coriaty Decl., ¶ 7.) In view of
 23 the facts that Plaintiff just recently filed this action, has not propounded any
 24 discovery to date, and will not be caused to miss any litigation-based deadlines in
 25 the short time it would take to obtain consent from BB&B to joinder of removal,
 26 Plaintiff will not be prejudiced by the short delay.

27 ///

28 ///

Notice to Adverse Parties and State Court

Pursuant to 28 U.S.C. § 1446(d), a Notice to Adverse Parties and Superior Court of Removal to Federal Court together with this Notice of Removal, is being served upon counsel for Plaintiff and will be filed with the Clerk of the Superior Court of the State of California, County of Santa Clara. A copy of the Notice to Adverse Parties and Superior Court of Removal to Federal Court is attached as **Exhibit C** to Mr. Coriaty's Declaration submitted herewith.

Conclusion

9 Based on the foregoing, this Court has jurisdiction over this action. No
10 previous application has been made for the relief requested herein. Accordingly, this
11 action is properly removed.

12 WHEREFORE, Defendant files this Notice of Removal so that the entire
13 action entitled *Kelly Tatum v. Sunbeam, Inc.; Newell Brands, Inc.; Bed Bath &*
14 *Beyond, Inc., and Does 1 to 25; Case No. 22CV395992*, now pending in the Superior
15 Court of California, Santa Clara County, shall be removed to this Court for all further
16 proceedings.

Dated: May 19, 2022

GOLDBERG SEGALLA LLP

/s/ Joseph R. Coriaty

By: JOSEPH R. CORIATY
Attorneys for Defendants
SUNBEAM PRODUCTS, INC., and
NEWELL BRANDS, INC.

1 CASE NO.: 22CV395992

2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of
5 eighteen years and not a party to the within action; my business address is 777 S. Figueroa Street,
5 Suite 2000, Los Angeles, CA 90017.

6 On May 19, 2022, I served the following document(s) described as **DEFENDANTS**
7 **SUNBEAM PRODUCTS, INC. AND NEWELL BRANDS, INC.'S NOTICE OF**
8 **REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

9 **SEE ATTACHED SERVICE LIST**

10 [X] **By E-Service:** I electronically served the above document(s) via ECF/PACER on all parties
11 opting for e-service and is available for viewing and downloading from the Court's
CM/ECF system

12 I declare under penalty of perjury under the laws of the State of California that the foregoing
13 is true and correct.

14 Executed on May 19, 2022, at Los Angeles, California.

15 **Yvonne Flores**
16 _____
Yvonne Flores

GOLDBERG SEGALLA LLP
P.O. Box 17220
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213-415-7200

SERVICE LIST

Kelly Tatum v. Sunbeam Products, Inc.
Case No. 22CV395992

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